No. 97-1218

Supreme Court, U.
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In The

Supreme Court of the United States

October Term, 1997

NATIONAL STEEL AND SHIPBUILDING COMPANY,

Petitioner,

vs.

OSCAR SMITH; MARK DRISCOLL; JOHN PARASKEVOPOULOS; GEORGE LOPEZ; JUAN P. CUBILLAS; JUAN MARQUEZ; MICHAEL RAY NASH; HECTOR MANUEL NAVARRO; STEVE HARDING; IRMA CAMACHA; LUIS BARCELO DURAZO; WILLIAM N. JORDAN; STANLEY E. TURNER; ROMEO DELEON; FRANCISCO BARRON; OSCAR NEVARAZ; ROBERT J. GILL; EDUARDO LENCIONI; PERRY MASTAW; ANTONIO MORALEZ; RODNEY RAMSEYER; MARIO CASTRO; and NORRIS FISHMAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Petitioner National Steel and Shipbuilding Company (hereinafter referred to as "Petitioner" or "NASSCO") respectfully submits the within Reply To Respondents' Brief In Opposition to the Petition For Writ of Certiorari in the above-captioned case.

RESPONDENTS HAVE MISLEAD THIS COURT ABOUT THEIR CLAIMS IN THIS ACTION IN A DESPERATE ATTEMPT TO AVOID *GARMON* PREEMPTION

Respondents have purposefully distorted and patently misrepresented their claims in this matter in a desperate attempt to avoid preemption of their claims in this action under the principles established by this Court in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). Respondents' Brief In Opposition falsely states that they "mention in their complaints, that they have been laid off in violation of the PECP *because the PECP is discriminatory on its face*" (Resp. Brief. at 2) and that "Respondents alleged that the PECP is discriminatory on its face . . . " (Resp. Brief at 6).

No such allegations or claims are contained in any of the Complaints that Respondents filed with the courts below. On the contrary, throughout their Complaints, the specific allegation is that Respondents were

> . . . low rated utilizing the [PECP] in complete disregard of NASSCO's policies and procedures, and in violation of that policy [in the PECP] which provides that no rating will be issued for an injured worker who is on 'light duty' outside

> of his normal classification and [NASSCO] used this low rating as a basis to lay off [Respondents].

This identical allegation is repeated in the Complaints herein by each of the Respondents.

Respondents have purposefully misrepresented the claims pled in their Complaints in hopes of convincing this Court that the fundamental issues of national labor policy presented by the Petition are illusory or non-existent. Petitioner has **not**, as Respondent suggests, "purposefully twist[ed] the gravamen of Respondents' claims" to create a basis for *Garmon* preemption. To the contrary, it is Respondents who seek to twist the true nature of their claims. **There is absolutely no allegation in any of the Complaints filed by Respondents herein that the PECP is facially discriminatory or violative of the ADA, nor any allegation which can be fairly read to so claim.** Rather, Respondents have each clearly alleged in their Complaints that they were laid off by NASSCO **in violation of the unilaterally implemented PECP and the policies of NASSCO.** These allegations unquestionably constitute an arguable unfair labor practice under Section 8(a)(5) of the National Labor Relations Act [29 U.S.C. § 158(a)(5)]. Thus, Respondents' claims are preempted by the provisions of the NLRA under the fundamental principles of national labor policy established by this Court in *Garmon*.

This Court should not be deceived by Respondents' blatant, self-interested and outrageous misrepresentation of their claims. Respondents' claims are singularly and unmistakably premised upon a threshold determination

that NASSCO engaged in conduct that arguably violates Section 8 of the NLRA.

CONCLUSION

For the reasons expressed herein and previously, NASSCO respectfully requests that its petition for a writ of certiorari be granted.

Respectfully submitted,

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